IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:12.12.2006
CORAM:
THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE S. TAMILVANAN
WRIT PETITION NO.1926 of 1999

Shaik Nawab .. Petitioner

vs.

1.Union of India rep. By
Secretary to Government
Ministry of Home Affairs
New Delhi.

2.The Deputy Inspector General
Central Industrial Security Force
(South Zone)
Rajaji Bhavan
D Block, Besant Nagar
Madras 600 090.

3.The Commandant
Office of the Commandant
Central Industrial Security Force
Neyveli Lignite Corporation/T.S.II
B1.29 Post
Cuddalore District
Pin 607 807. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the third respondent relatting to to his order bearing No Ref.No.V 15014?CISF? NLC? Maj-10/SN/97-98868 dated 03.02.1998 and of teh second respondent relating to his order bearing No CV-11014/23/98/L&R (S2) dated 19.06.1998, quash the same and direct the respondents to reinstate the petitioner in serrvice with backwages, continuity of service and all ; attendent benefits as stated therein.

For petitioner : Ms. G. Ramapriya

For respondents : Mr. C. Krishnan
Senior Central Govt.,
Standing Counsel.

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ORDER

(Order of the Court was made by P. SATHASIVAM,J.)

Aggrieved by the orders of the third respondent dated 03.02.1998 and of the second respondent dated 19.06.1998, in and by which the petitioner was removed from service, the petitioner has filed the above writ petition to quash the same and direct the respondents to reinstate him in service with back-wages, continuity of service and all attendant benefits.

2. According to the petitioner, he joined the services of the Central Industrial Security Force (in short "CISF") on 13.01.1982 as Constable. Subsequently, he was promoted as Lance Naik. From 13.01.1982 he had been given several awards in recognition of his meritorious service. In October, 1992, he was posted at Vishakapattinam, where he continued in service till November, 1995, when he was posted at Neyveli Lignite Corporation at Neyveli. He lost his brother in the month of August, 1996. Petitioner's wife being an illiterate was unable to manage the family. Considering his family circumstances, he made a representation to the Deputy Inspector General of Police (CISF) for posting him at Vishakapattinam. He sent several reminders. Due to family circumstances, he was constrained to avail 15 days casual leave in the month of January, 1997. Again, he availed earned leave in the month of May/June, 1997. During July, 1997 also the petitioner applied for leave on 2 occasions, but the same was refused. Meanwhile, he received a telegram stating that his wife was in a very serious condition and so, he rushed to Vishakapattinam. Within few days thereafter, he slipped in the bath-room, as a result of which he suffered injury and severe pain in the back and wrist and he suffering from "Sciatica" due to which he was bed-ridden. While he was bed ridden, he was issued with a charge memo dated 20.09.1997, charging him with gross remiss indiscipline and conduct unbecoming of a member of the Armed Forces. It is also stated in the charge memo that he deserted duty on 16.07.1997. He submitted his explanation on 02.10.1997. Ignoring his explanation, the second respondent chose to conduct an enquiry in respect of the said charge. Due to illness he was not able to attend the enquiry and he was temporarily shifted to his father-in-law's house at Malakapuram. Thereafter, he came to know that an exparte enquiry was conducted and charge against him was held proved and penalty of removal from service with immediate effect was imposed on him by the third respondent in his proceedings dated 03.02.1998. On 04.03.1998, he preferred an appeal to the second respondent, which was also dismissed on 19.06.1998. In such circumstances, having no other remedy, the petitioner filed the present writ petition questioning both the orders.

3. The petitioner was dealt with under Rule 34 of CISF Rules 1969, on the following charge.

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"Gross remiss, indiscipline, sheer misconduct and unbecoming of a member of an Armed Force in that No.822090092 L/Naik Shaik Nawab of CISF Unit, NLC Neyveli was detailed for "C" Shift duty from 21.00 hrs on 16.7.97 to 05.00 hrs on 17.7.97 at Main Gate Nala of TS-II, but he died not turn up for duty and deserted from the unit lines on the same day i.e. On 16.7.97 at about 22.35 hrs on his own volition. He is continuing to remain as such till date. Hence the charge."

4. The charge memorandum was sent to the home address of the petitioner, which was received by him on 25.09.1997. He submitted his written reply dated 02.10.1997, in which he denied the charge. Since his reply was not satisfactory, Departmental enquiry on the said charge was initiated and an Enquiry Officer was appointed on 18.10.1997. The Enquiry Officer sent four enquiry notices to the home address of the petitioner, but he did not appear before the Enquiry Officer. Even the service through local police was ineffective. The Enquiry Officer completed the enquiry exparte as per the laid down procedure as envisaged in the CISF Rules. The Enquiry Officer examined five prosecution witnesses and recorded their statements and also marked documents. In the absence of participation by the petitioner, the Enquiry Officer based on the evidence let in on the side of the Management, submitted his report holding that the charge levelled against him proved. The Enquiry Officer submitted his report on 29.12.1997, holding the charge framed against the petitioner was proved beyond doubt. Copy of the findings of the Enquiry Officer / enquiry report was sent to the home address of the petitioner, directing him to submit his representation if any within 15 days from the date of receipt of the report. The said enquiry report was received back undelivered on 24.01.1998 with the postal endorsement "addressee continuous absent round the clock 7 days."

5. The Disciplinary Authority agreed with the report of the Enquiry Officer, and concluded that the charged official wilfully left the Unit lines on 16.07.1997, without any valid leave/permission, and even after repeated chances he failed to report back at his Unit for duty. He also concluded that the petitioner did not give any valid reason for his prolonged unauthorised absence from duty. After taking note of the gravity of proven delinquency and accepting the findings of the Enquiry Officer, the disciplinary authority, imposed the penalty of removal from service with immediate effect. As said earlier, the said order was confirmed by the Appellate Authority.

6. The learned counsel for the petitioner, after taking us through all the orders, vehemently contended that the respondents have not considered the valid reasons for his absence and in any event, the conduct of the petitioner in not attending duty on 16.07.1997 would not amount to "desertion".

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7. It is not in dispute that since the reply of the petitioner with reference to charge memo was not satisfactory, Departmental enquiry was initiated. The records produced show that the Enquiry Officer sent four enquiry notices to the home address of the petitioner, but he did not appear before the Enquiry Officer; hence, the Enquiry Officer has completed the enquiry exparte, as per the procedure prescribed. Even in the absence of the petitioner, on the side of the Department, five persons were examined as prosecution witnesses and the Enquiry Officer recorded their statements and also marked documents as exhibits.

8. Mr. S.K. Roy as PW.1, deposed before the Enquiry Officer that he conducted "C" shift roll-call on 16.07.1997 at 20.45 hours and he found the petitioner absent. PW.1 made a G.D. Entry vide No.436 dated 16.07.1997 and he produced the same as Ex.P.2. One P.K. Sharma was examined as PW.2. According to him, the petitioner applied for 40 days leave with effect from 01.08.1997 in connection with house construction, but it could not be recommended that he had already availed leave on two occasions earlier and just remained 40 days overstay of leave. He also deposed that he searched the petitioner on 16.07.1997, but could not locate him. He intimated the same to the higher officer and also sent a report to the Commandant on 17.07.1997, which was marked as Ex.P.5.

9. One S.P. Nair was examined as PW.3. According to him, it was brought to his notice that the petitioner was not available in the Unit Lines and they made efforts to trace out him, but all in vain. One B.L. Singh was examined as PW.4. He also deposed that on 16.07.1997, he came to know that the petitioner was absent from "C" shift duty and he immediately checked all the possible places along with S.P. Nair, but could not locate the petitioner. He made GD entry to this effect vide No.538 dated 17.07.1997, which was marked as Ex.P.4.

10. One Md.Rafi was examined as PW.5. According to him, it was he, who, sent first call-up notice to the home address of the petitioner on 18.07.1997 under registered post with acknowledgment due and subsequent call-up notices were sent to his home address on 31.07.1997 and 18.08.1997. He further added that the second and third call-up notices were duly received by the petitioner on 08.08.1997 and 26.08.19997 respectively, but the petitioner neither responded to the said notices nor reported to duty as directed. He also produced the postal acknowledgment receipts, which were marked as Exs.P.6 to P.10. The Enquiry Officer also examined one K. Rangasamy as CW.1. He also informed that on 16.07.1997 the petitioner was not available in the Unit lines, and he searched him in all the possible areas, but could not locate him till completion of his duty at 05.00 hours on 17.07.1997.

11. The Enquiry Officer analyzing all the above mentioned witnesses and documents produced by them, found that the charge levelled against the delinquent is established beyond doubt and submitted his report. The disciplinary authority verified the entire enquiry report and

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agreed with the conclusion of the Enquiry Officer. He concluded that in enquiry it is proved that the petitioner willfully left the Unit lines on 16.07.1997 without any valid leave or permission and even after repeated chances, he failed to report back for duty. He also concluded that the petitioner did not give any valid reason for his prolonged unauthorised absence from duty. Taking note of all these factual materials and findings, and keeping in mind that strict discipline is to be maintained, the disciplinary authority imposed the penalty of removal from service. The said order was confirmed by the appellate authority, after thorough discussion.

12. Though the learned counsel for the petitioner submitted that the appellate authority disposed of the appeal on the assumption that the desertion has been proved, as discussed earlier, the report of the Enquiry Officer amply shows that on 16.07.1997 the petitioner was not on duty and he did not inform any one, nor applied leave and the evidence of Pws.1 to 5 also establish the same. In those circumstances, we are satisfied that the Department has proved that the petitioner deserted the Unit lines on 16.07.1997; accordingly, we reject the said contention.

13. It is also seen that though the Enquiry Officer sent several notices intimating the date of enquiry, admittedly, the petitioner did not turn up and attended the enquiry. Though the petitioner sent a telegram on 31.10.1997, as rightly pointed out, thereafter, there was no intimation from the petitioner. As rightly pointed out, being a member of a Armed Force, having put more than 15 years of service, he should have intimated the Unit about his whereabouts from time to time and in case of change of place, the same should have also been intimated to his parent Unit, but, admittedly, he failed to do so. There is no valid and sufficient documentary evidence in support of his defence. The materials placed before the Enquiry Officer which were considered by the Disciplinary authority clearly show that the desertion/continuous absence from duty by the petitioner was established.

14. Apart from this, Mr. C. Krishnan, learned senior counsel appearing for the respondents by producing the Service Record of the petitioner before us submitted that he had availed maximum number of days of leave eligible to him during his service. He also pointed out that during the year 1997, the petitioner was permitted to avail 93 days of earned leave in addition to other eligible leave, such as casual leave and leave on half pay. It is pointed out that the petitioner was deserted from the Unit at his own, unathorisedly since his request for leave on the ground of house construction was not considered.

15. The learned counsel for the respondents has also pointed out that the petitioner's absence in spite of three call-up notices has been treated as desertion, as the expression "desertion" and "absent from duty in spite of call-up notices, but on his own volition" and "absence simplicitor" have not been separately defined. He also pointed out that,

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under Section 18-2(A) of CISF Act,1968, if the nature of absence from duty is serious one, the said absence will be tried as an offence in an ordinary Criminal Court imposing imprisonment for one year. But in the instant case, according to him, the authorities took a lenient view and conducted disciplinary proceedings resulting in removing the petitioner from service.

16. We also satisfied that the punishment awarded to the petitioner is commensurate with the proven delinquency on the part of the petitioner meeting the ends of justice. We are further satisfied that the entire proceedings were held as per the provisions of the CISF Act and Rules, and we do not find any valid material to interfere with the orders impugned.

Net result, the writ petition fails and the same is dismissed. No costs.

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Sd/
Asst. Registrar

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Sub Asst.Registrar

To

1.Secretary to Government
Ministry of Home Affairs
Union of India, New Delhi.

2.The Deputy Inspector General
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+ 1 CC to M.G. Ramapriya Advocatae SR 61488

+ One cc to Mr. C. Krishnan SCGSC SR 61405.
KG (co)
sg 27/12/06

W.P.No.1926 of 1999

Dated:12.12.2006

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